

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ASHLEY ADAMS, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

AT&T MOBILITY, LLC, a Delaware limited
liability company, THE HACKER GROUP,
INC., a Delaware corporation,

Defendants.

No.

COMPLAINT — CLASS ACTION

1. Plaintiff Ashley Adams brings this class action against Defendants AT&T Mobility LLC (“AT&T”) and The Hacker Group, Inc. (“Hacker”) to stop AT&T’s practice of making unsolicited text message calls to cellular telephones, and to obtain redress for all persons injured by Defendants’ conduct. Plaintiff, for her complaint, alleges as follows upon personal knowledge as to herself and her own acts and experiences and, as to all other matters, upon information and belief including based on investigation conducted by her attorneys.

NATURE OF THE CASE

2. In a recent effort to promote its services to cellular telephone subscribers it hoped to acquire, AT&T, the proprietor of one of the nation’s largest cellular telephone companies, engaged Hacker and/or other marketing agencies to conduct an especially pernicious form of marketing: the transmission of unauthorized advertisements in the form of “text message” calls to the cellular telephones of non-AT&T customers.

1 Western District of Washington).

2 11. Venue is proper in this district because one or more Defendants transact business
3 in this District.

4 **COMMON ALLEGATIONS**

5 12. In recent years, marketers who have often felt stymied by federal laws limiting
6 solicitation by telephone, facsimile machine, and e-mail have increasingly looked to alternative
7 technologies through which to send bulk solicitations cheaply.

8 13. One of the newest types of such bulk marketing is to advertise through Short
9 Message Services. The term "Short Message Service" or "SMS" is a messaging system that
10 allows cellular telephone subscribers to use their cellular telephones to send and receive short
11 text messages, usually limited to 160 characters.

12 14. An "SMS message" is a text message call directed to a wireless device through
13 the use of the telephone number assigned to the device. When an SMS message call is
14 successfully made, the recipient's cell phone rings, alerting him or her that a call is being
15 received. As cellular telephones are inherently mobile and are frequently carried on their
16 owner's person, calls to cellular telephones, including SMS messages, may be received by the
17 called party virtually anywhere worldwide.

18 15. Unlike more conventional advertisements, wireless spam can cost its recipients
19 money, because cell phone users must frequently pay their respective wireless service providers
20 either for each text message call they receive or for a text plan that includes a number of
21 messages, regardless whether or not the message is authorized.

22 16. Over the course of an extended period beginning at least as early as 2009, AT&T
23 and its agents, including Hacker, conducted a wide-ranging marketing campaign designed and
24 emanating, in part or in whole, from this District, to convince consumers to switch from their
25 existing cellular telephone service provider to AT&T and furthermore directed the mass
26 transmission of wireless spam to the cell phones of thousands of former Unicef subscribers.

27 17. For instance, on or about April 2, 2009, Plaintiff's cell phone rang, indicating that

1 a text call was being received.

2 18. The “from” field of such transmission was identified cryptically, and may have
3 contained an abbreviated telephone number known as an SMS short code operated by
4 Defendants. The body of such text message read:

5 ATT FREE MSG: INCREASE YOUR MOBILE TO MOBILE
6 CALLING COMMUNITY TO 77 MILLION PEOPLE.
7 UPGRADE TO AN ATT PLAN W/UNLIMITED M2M MINUTES.
8 VISIT AN ATT STORE TODAY!

9 19. Upon receiving the above text message, Plaintiff contacted AT&T and requested
10 that her telephone number be placed on AT&T’s internal Do-Not-Call list, which AT&T
11 declined to honor. Indeed, within several weeks of receiving the above spam text message,
12 AT&T sent more than a dozen similar spam text messages to Plaintiff in knowing violation of
13 Plaintiff’s privacy.

14 20. At no time did Plaintiff consent to the receipt of such text message calls from
15 AT&T.

16 **CLASS ACTION ALLEGATIONS**

17 21. Plaintiff brings this action pursuant to Rule 23(a), (b)(2), and (b)(3) on behalf of
18 herself and a class (the “Class”) defined as follows:

19 All current and former Unicef subscribers in the United States and its Territories who
20 received one or more unauthorized text message advertisements on behalf of AT&T.

21 [Excluded from the Class are Defendants’ directors, managers, officers, and
22 employees.]

23 22. In order to make their *en masse* transmission of text message advertisements
24 economical, Defendants used a list of thousands of cellular telephone numbers of consumers
25 acquired from third-parties. As such, the Class consists of thousands of individuals and other
26 entities, making joinder impractical.

27 23. Plaintiff will fairly and adequately represent and protect the interests of the other

1 members of the Class. Plaintiff has retained counsel with substantial experience in prosecuting
 2 complex litigation and class actions. Plaintiff and her counsel are committed to vigorously
 3 prosecuting this action on behalf of the members of the Class, and have the financial resources to
 4 do so. Neither Plaintiff nor her counsel have any interest adverse to those of the other members
 5 of the Class.

6 24. Absent a class action, most members of the Class would find the cost of litigating
 7 their claims to be prohibitive, and will have no effective remedy. The class treatment of common
 8 questions of law and fact is also superior to multiple individual actions or piecemeal litigation in
 9 that it conserves the resources of the courts and the litigants, and promotes consistency and
 10 efficiency of adjudication.

11 25. Defendants have acted and failed to act on grounds generally applicable to the
 12 Plaintiff and the other members of the Class in transmitting the wireless spam at issue, requiring
 13 the Court's imposition of uniform relief to ensure compatible standards of conduct toward the
 14 members of the Class.

15 26. The factual and legal bases of Defendants' liability to Plaintiff and to the other
 16 members of the Class are the same, resulting in injury to the Plaintiff and to all of the other
 17 members of the Class as a result of the transmission of the wireless spam alleged herein.
 18 Plaintiff and the other Class members have all suffered harm and damages as a result of
 19 Defendants' unlawful and wrongful conduct as a result of the transmission of the wireless spam.

20 27. There are many questions of law and fact common to the claims of Plaintiff and
 21 the other members of the Class, and those questions predominate over any questions that may
 22 affect individual members of the Class. Common questions for the Class include but are not
 23 limited to the following:

- 24 (a) Does the wireless spam Defendants distributed violate 47 U.S.C. § 227?
- 25 (b) Are the Class members entitled to treble damages based on the willfulness
- 26 of Defendants' conduct?
- 27

FIRST CAUSE OF ACTION

(Violation of 47 U.S.C. § 227, individually and on behalf of the Class)

28. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

29. Defendants made unsolicited commercial text calls to the wireless telephone numbers of the Class. Each such text message call was made using equipment that, upon information and belief, had the capacity to store or produce telephone numbers to be called, using a random or sequential number generator. By using such equipment, Defendants were able to effectively send thousands of text messages simultaneously to lists of thousands of wireless phone numbers of consumers without human intervention.

30. These text calls were made *en masse* without the prior express consent of the Plaintiff and the other members of the Class to receive such wireless spam.

31. Defendants have, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendants' conduct, the members of the Class incurred injury by having to pay their respective wireless carriers for the text messages and, under section 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of \$500 in damages for each violation of such act.

32. Because Defendants' had knowledge that Plaintiff and the Class did not consent to the receipt of the aforementioned wireless spam, the Court should, pursuant to section 47 U.S.C. § 227(b)(3)(C), treble the amount of statutory damages recoverable by Plaintiff and the other members of the Class.

Wherefore, Plaintiff Ashley Adams, on behalf of herself and the Class, prays for the following relief:

- A. An order certifying the Class as defined above;
- B. An award of actual and/or statutory damages;
- C. An award of up to three times the actual and/or statutory damages;
- D. An injunction requiring Defendants to cease all wireless spam activities;
- E. An award of reasonable attorneys' fees and costs; and

1 F. Such further and other relief the Court deems reasonable and just.

2
3 **JURY DEMAND**

4 Plaintiff requests trial by jury of all claims that can be so tried.

5
6 Dated: May 4, 2010

Respectfully submitted,

7 s/ Cliff Cantor, WSBA # 17893
8 LAW OFFICES OF CLIFFORD A. CANTOR, P.C.
9 627 208th Ave. SE
10 Sammamish, WA 98074
(425) 868-7813

11 Michael J. McMorrow
12 Ryan D. Andrews
13 EDELSON MCGUIRE LLC
14 350 North LaSalle, Suite 1300
Chicago, IL 60654
(312) 589-6370

15 Counsel for Plaintiff Adams, individually and on
16 behalf of all others similarly situated
17
18
19
20
21
22
23
24
25
26
27